

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re the Application of: **Yoshihiro YONEDA**

Art Unit: **3732**

Application Number: **10/544,573**

Examiner: **Rachel Running Steitz**

Filed: **August 5, 2005**

Confirmation Number: **8278**

For: **DOUBLE-STICK ADHESIVE TAPE FOR WIG AND WIG
PROVIDED WITH THE SAME**

Attorney Docket Number: **052875**

Customer Number: **38834**

SUBMISSION OF APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

August 24, 2010

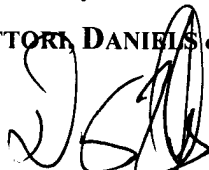
Sir:

Applicants submit herewith an Appeal Brief in the above-identified U.S. patent application.

Applicants submit herewith the payment in the amount of \$540.00 to cover the cost for the Appeal Brief. If any additional fees are due in connection with this submission, please charge Deposit Account No. 50-2866.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPEAL BRIEF FOR THE APPELLANT

Ex parte Yoshihiro YONEDA et al. (Applicant)

DOUBLE-STICK ADHESIVE TAPE FOR WIG AND WIG PROVIDED WITH THE SAME

Application Number: 10/544,573

Filed: August 5, 2005

Appeal No.:

Art Unit: 3732

Examiner: Rachel Running Steitz

Submitted by:
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Art Unit: 3732

Appeal Brief
Attorney Docket No.: 052875

BRIEF ON APPEAL

(I) REAL PARTY IN INTEREST

The real party in interest is **ADERANS CO., LTD.**, by an assignment recorded in the U.S. Patent and Trademark Office on **August 5, 2005**, at Reel **017568**, Frame **0132**.

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(II) RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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(III) STATUS OF CLAIMS

Claims 1, 3, 6, 8 and 14-27 are pending in the above-identified application, with claims 14-27 being withdrawn. Claims 2, 4, 5 and 9-13 are canceled. Claims 1, 3, 6 and 8 are appealed.

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(IV) STATUS OF AMENDMENTS

No amendments have been filed subsequent to final rejection.

(V) SUMMARY OF THE CLAIMED SUBJECT MATTER

Independent Claim 1:

Independent claim 1 is directed to a double-stick tape for a wig. See FIGS. 1-7. Claim 1 recites a double-stick adhesive tape (FIG. 1, reference character **10**; paragraph [0044]) for a wig (FIG. 1, reference character **100**) having a net member (FIGS. 1 and 7, reference character **104**; paragraph [0048]) as a portion of a wig base (FIG. 1, reference character **101**; paragraph [0046]), a first adhesive surface layer (FIGS. 3-7, reference character **12**; paragraphs [0019]-[0021] and [0049]-[0057]) having a thickness more than half of a diameter of the net member (FIGS. 1 and 7, reference character **104**; paragraph [0048]) to stick to the net member, and a second adhesive surface layer (FIGS. 3-7, reference character **13**; paragraphs [0019]-[0021] and [0049]-[0057])) having a thickness equal to or more than a diameter of human hair (FIGS. 5 and 6, reference character **102**), wherein the first adhesive surface layer (FIGS. 3-7, reference character **12**; paragraphs [0019]-[0021] and [0049]-[0057]) is thicker than the second adhesive surface layer (FIGS. 3-7, reference character **13**; paragraphs [0019]-[0021] and [0049]-[0057]), and a side of the first adhesive surface layer (FIGS. 3-7, reference character **12**; paragraphs [0019]-[0021] and [0049]-[0057]) to the net member (FIGS. 1 and 7, reference character **104**; paragraph [0048]) has convexities and concavities (FIGS. 2(c), 5 and 6, reference character **12a**) of the type formed on the surface by pressing, or blast processing, in order to scatter light (paragraph [0017] and [0057]).

Dependent Claim 3:

Dependent claim 3 is directed to the double-stick adhesive tape for the wig. See FIGS. 1-7. Claim 3 recites the thickness of the first adhesive surface layer (FIGS. 3-7, reference character **12**; paragraphs [0019]-[0021] and [0049]-[0057]) is between 50 and 200 μm (paragraphs [0021], [0027] and [0062]) and the thickness of the second adhesive surface layer (FIGS. 3-7, reference character **13**; paragraphs [0019]-[0021] and [0049]-[0057]) is between 50 and 150 μm (paragraphs [0037] and [0063]).

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(VI) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The rejection of claims 1, 3, 6 and 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,170,491 to *Maekawa* in view of U.S. Publication No. 2004/0237987 to *Gold*, is presented for review.

(VII) ARGUMENT

Independent Claim 1

The combination of *Maekawa* and *Gold* fail to disclose or render obvious the features of independent claim 1.

Issue 1:

Appellants submit that the references (*Gold* and *Maekawa*) would not be amenable to combination as suggested by the examiner. It is the examiner's position that the *Maekawa* reference shows all of the features of claim 1 except for the concavities and convexities in the first adhesive surface.

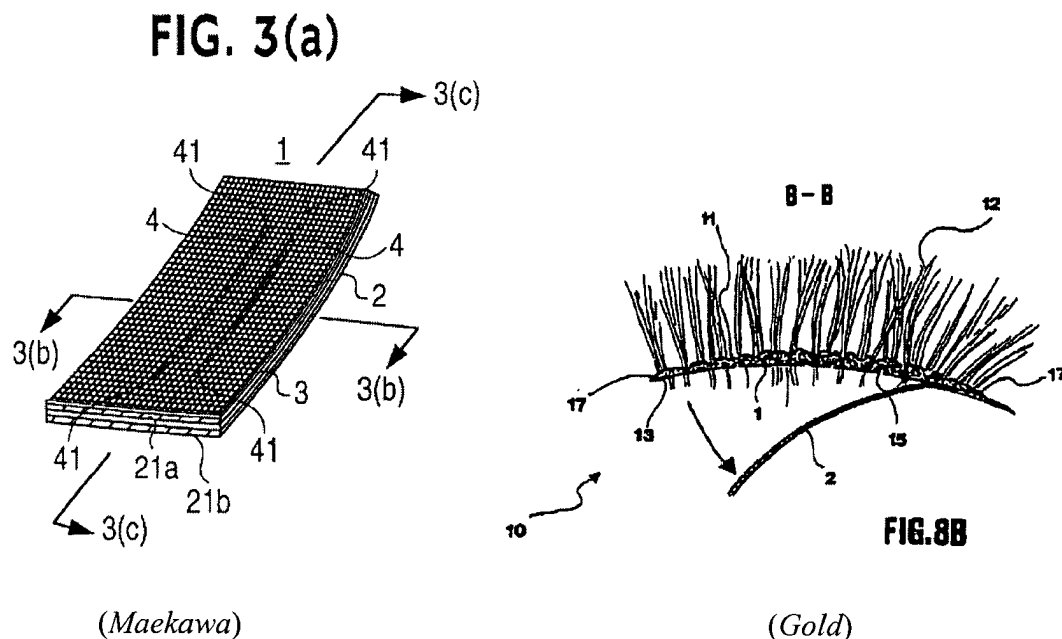
In attempting to disclose the feature of convexities and concavities of the first adhesive surface layer, the examiner points to the adhesive material disclosed in paragraph [0052] and FIG. 8B of *Gold*. Here *Gold* discloses:

Furthermore, the adhesive material can be mixed with air dispersed in small bubbles. When the laminar support is put on the removable film, the small bubbles or part of them explode causing many craters 15 and a discontinuous positioning of the adhesive material on the laminar support 1.

It is the examiner's position that the craters 15 of the adhesive material disclose the convexities and concavities of claim 1.

The examiner contends that a person having ordinary skill in the art would use the adhesive material disclosed in paragraph [0052] and FIG. 8B of *Gold*, in the invention of *Maekawa* “in order to increase transpiration of the adhesion.” (Page 3, paragraph 2 of final office action dated April 12, 2010.)

In other words, the examiner contends that using the structure of *Maekawa*, as shown in FIG. 3(a), and replacing the adhesive layers 21(a) and 21(b) of *Maekawa* with the adhesive of *Gold*, the convexities and concavities feature of claim 1 would be disclosed. Please see FIG. 3(a) of *Maekawa* and FIG. 8B of *Gold* below.



Appellants respectfully disagree with the examiner. The references would not be combined by a person having ordinary skill in the art at the time of the invention as the examiner suggests because the references themselves teach away from the combination. Specifically, appellants direct the Boards' attention to *Gold* which teaches the adhesive with small air bubbles in order to increase transpiration:

This arrangement increases the transpiration of the adhesive and its capacity of growth of hair through its thickness. (Paragraph [0053] of *Gold*.)¹

This is the advantage the examiner cites to in order to provide a reason to combine the references. However, the proposed combination does not provide the transpiration function as the examiner suggests.

To wit, appellants note that in between the adhesives layers 21 of *Maekawa*, exists flexible planar component 2 (see FIG. 3(a) of *Maekawa* above). As discussed in column 3, lines 6-16 of *Maekawa*, flexible planar component 2 is made from:

transparent or semitransparent synthesized resins such as plastics, for example polyethylene, polypropylene and vinyl chloride.

Applicants submit that these plastics do not possess the transpiration qualities discussed in *Gold*. Thus, because there is a plastic sheet in between the adhesive layers, the tape itself will not have the transpiration properties, thus defeating the purpose of combining *Gold* with *Maekawa*, as stated by the examiner.

The examiner responds by stating in the office action dated April 12, 2010:

However, polyethylene is a transpiring material see Patent H2042 H Dobrin et al. that teach a breathable polyethylene material, therefore, the motivation provided by Gold would allow the device to be transpiring.²

Appellants respectfully disagree with the examiner. To wit, *Dobrin* states in column 1, lines 24 through 26:

These outer covers, generally referred to as backsheets, are often constructed from fluid impervious films such as polyethylene. (Emphasis added.)

Thus, according to *Dobrin*, polyethylene is impervious to fluids. As such, the examiner's position that a person having ordinary skill in the art would combine *Gold* and *Maekawa* "in order to increase the transpiration of the adhesion," is improper as the combination would reduce transpiration as the polyethylene film 2 of *Maekawa* is impervious to fluids.³

As such, appellants submit that the combination of *Gold* and *Maekawa* is improper.

¹ Recall that the examiner considers the air bubbles to disclose the feature of concavities and convexities in the first adhesive surface layer.

² H2042 H is a statutory invention registration.

³ Appellants note that *Dobrin* does discuss a film 12 which is "breathable." However this film 12 is "a blend of a thermoplastic polymer with an inorganic material." Emphasis added. Column 2, lines 61 and 62. As such, film 12 is irrelevant to the polyethylene film discussed in *Maekawa*.

Issue 2:

The examiner contends that *Maekawa* discloses a double stick adhesive tape for a wig, comprising two adhesive surface layers wherein the first adhesive surface layer has a thickness more than half of a diameter of the net member to stick to the net member (Fig. 1b; column 2, lines 64-68). Alteration of the thickness of the first and the second adhesive layers are considered by the examiner to be a matter of design choice.

As shown in FIG. 1(b) of *Maekawa*, adhesive layers 21(a) and 21(b) have the same thickness. As such, *Maekawa* does not disclose the features of claim 1.

Though *Maekawa* does not suggest a thickness of the first adhesive surface layer, the examiner asserts that it is a matter of design choice to alter the thickness of the first adhesive surface layer. This assertion is improper.

In this regard, *Maekawa* states:

Either surface of net-type component 3 can be stuck and fixed to the flexible planar component 2 by means of the adhesive 21a. Further, components 2, 3 also can be sewed so that they are fixed more firmly. (Column 3, lines 54-57.) (Reference character 2 is described as “flexible planar component” and reference character 3 is described as a “net-type component” according to *Maekawa*.)

The above passage shows that a person having ordinary skill in the art would sew a net member 3 to planar component 2 to firmly fix it. This shows that *Maekawa* does not suggest:

- (1) the problem of adhesion between the net-type component and the adhesive 21a, and
- (2) the thickness of the adhesive surface layer may contribute to the problem.

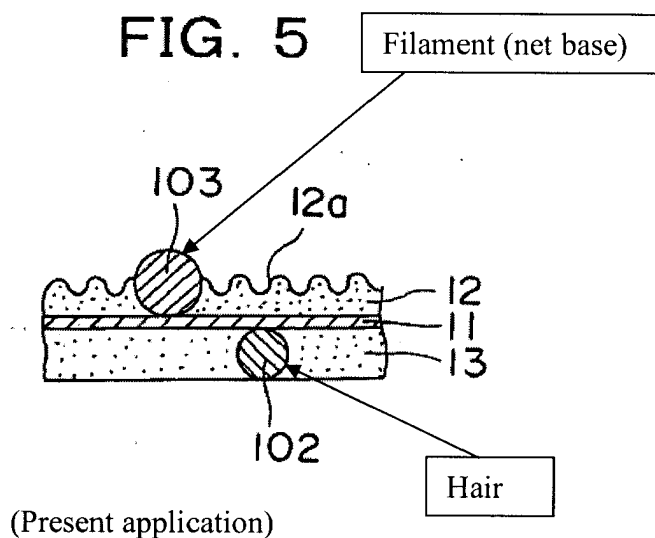
A person having ordinary skill in the art would try to sew the net-type component and the adhesive together according to *Maekawa*. Thus, there is no evidence that to show that a person having ordinary skill in the art would alter the thickness of the first adhesive surface layer to fix it to firmly a net member, as suggested by the examiner.

Further, contrary to the examiner's position, a person having ordinary skill in the art would have no reason to modify or go against the teaching of *Maekawa*. The thickness of the adhesive layers is not simply a design choice, but serves a practical, useful and non-obvious purpose in the application. Contrary to a design choice, the thickness of the respective adhesive layers is not arbitrary and was specifically engineered so that the first adhesion layer could stick to the net member and the second adhesion layer could stick to the hair follicle.⁴

That is, the thicker adhesion layer 12 is designed to hold a filament with a larger diameter than that of human hair. As such, the first adhesion layer of claim 1 is thicker than the second

⁴ *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) (Claims to a hydraulic power press which read on the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device.); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975) (the particular placement of a contact in a conductivity measuring device was held to be an obvious matter of design choice). Emphasis added. MPEP 2144.04(VI)(C).

adhesion layer of claim 1 which is designed to attach to a human hair. Please see annotated FIG. 5 of the present application below.



As described in paragraph [0035] of the present application:

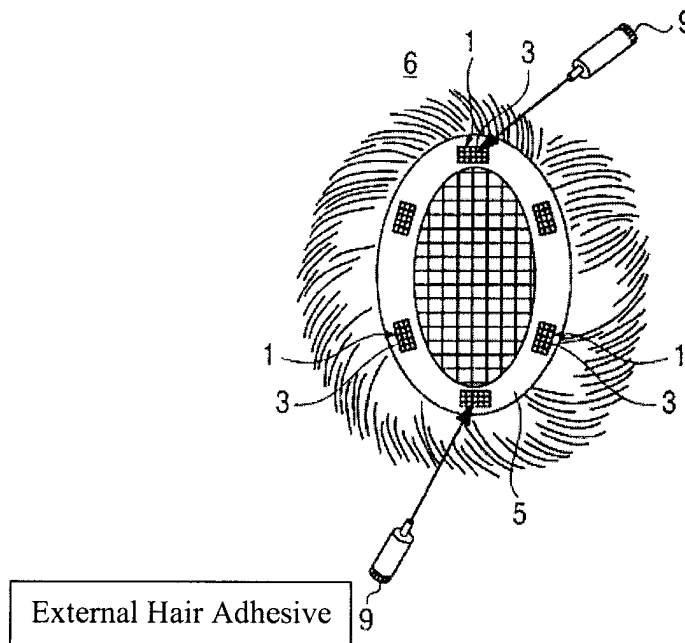
Further, the second characteristics of the double-stick adhesive tape 10 of the present invention is, as shown in Fig. 3, that at least one side of the adhesive layer 12 of adhesive layers 12, 13 is formed to have a thickness to bury more than half of a wire diameter of the filament 103 which makes up the wig base 101.

As to the thickness of the second adhesive layer, the examiner asserts that it is a matter of design choice, though *Maekawa* does not suggest a thickness of the second adhesive surface. Furthermore, *Maekawa's* double stick adhesive tape needs an external hair adhesive for the net-type component 3 for fitting a wig.

Maekawa states:

as shown in FIG. 6(a), an external hair adhesive 9 is applied onto the net-type component 3 of the wig-fitting component 1 fixed to the back of a wig base 5 (see column 5 lines 61 to 64).

Maekawa clearly shows that the net-type component 3 needs an external hair adhesive in order to fit the wig onto a head. (I.e., see FIG. 6(a), shown below.)



(*Maekawa*, FIG. 6(a))

It is clear that an external hair adhesive is applied on the net-type component 3, which the net-type component 3 is attached to the adhesive 21a, and the external hair adhesive attaches to human hair. In other words, adhesive 21a does not contact and attach to human hair.

As such, there is no need to alter the thickness of adhesive 21a to fit the wig. Thus, there is no motivation for a person skilled in the art to alter the thickness of the second adhesive layer because an external hair adhesive 9 provides the required adhesiveness. Further, as the examiner has provided no explicit rationale for the design choice, applicants respectfully submit that the rejection is improper.

Issue 3:

Appellants submit that the claimed invention is not obvious, even if the references were combined as suggested by the examiner. Specifically, the claimed invention lacks a net-type component 3 of *Maekawa*. Regarding a net-type component 3, *Maekawa* discloses:

a wig-fitting component or element 1 comprises a net-type component 3 stuck on one side of a flexible planar component 2 with adhesive 21a, 21b adhered to opposite sides of component 2. (Column 2, lines 64-67.)

and,

the adhesive 9 spreads to every corner of the natural hair and the fine meshes of the net-type component 3, and in particular, enters such meshes. Hence, strong adhesion effects can be obtained by a so-called anchor action as compared with the case of employing a component with a smooth surface. (See the column 6 lines 3 to 9.)

This shows that the net-type component 3 is an essential feature of *Maekawa* for anchor action. *Maekawa* does not teach and suggest deletion of the net-type component 3. *Gold* also does not teach a feature of a net-type component. Accordingly, there is not motivation or reason

for a person skilled in the art to not include the net-type component 3 of *Maekawa* if the references were combined.

Furthermore, the claimed invention does not need anchor action as described in *Maekawa*, and the claimed invention does not require an external hair adhesive in order to fit a wig onto a head. The examiner has neglected to consider nonexistence of a net-type component in the claimed invention, which is another difference between the claimed invention and the cited art. As such, applicants respectfully submit that the rejection is improper.

Thus, neither *Maekawa* or *Gold* provide a suggestion or motivation to make the combination. *Maekawa* does not teach or suggest the problems discussed in the present specification regarding a double stick adhesive not having sufficient adhesive force to hold a wig base having a net base, while not being visible in use. There is no motivation in *Maekawa* toward solving this problem.

In addition, *Gold* discloses that a laminar support with craters and hairs are implanted into the laminar support. Please see FIG. 8B of *Gold*. Therefore the laminar support is a wig base for implanting hairs. Furthermore, *Gold* discusses an arrangement of many craters and discontinuous increases in the transpiration of the adhesive and its capacity of growth through its thickness. However, *Gold* does not teach or suggest that the laminar stick is deglossed (i.e. having convexities or concavities), or that the craters function as a deglossed surface.

Accordingly, *Gold* only discloses that the craters provide a transpiring function to the wig base with hairs implanted. In contrast, the wigs disclosed in *Maekawa* have net members composed of filaments; the wigs already possess a transpiring function and there is no need to make the wig base be transpiring. As such, there is no motivation to combine the *Maekawa* and *Gold* references.

Dependent Claim 3:

Applicants respectfully submit that the features of dependent claim 3 are not disclosed or rendered obvious by the cited references.

Regarding dependent claim 3, the specified range of the thickness is deemed a matter of design choice by the examiner, obtained through routine experimentation in determining optimum results. (Page 3, paragraph 3 of the final office action dated April 12, 2010.)

As discussed above with respect to claim 1, the thickness of the first adhesive surface and the thickness of the second adhesive surface is specifically engineered to adhere to a net member and hair respectively. As discussed in the present application:

Thus, by providing one side of adhesive layers 12 with thickness at least half or more of the diameter of filament 103, since about the lower half of filament 103 is wrapped and peripherally adhered in adhesive layer 12 when one side of adhesive layers 12 of the double-stick adhesive tape 10 is pressed to a net base, sufficient

adhesive strength can be obtained compared with the prior case of linear adhesion. (Paragraph [0035].)

Further, no mention is made in *Maekawa* or the other cited references of the problems associated with a layer that is too thick. This problem however was identified by the present inventors and discussed in the present application:

Here, if the thickness t_2 of said one side of adhesive layer 12 is too thick, the filament and its network are totally buried therein, become difficult to be peeled off from the wig base 101, as well as adhesive layer 12 may come out upward of the network of the net base, and may adhere to the implanted hair 102. If the thickness is as thin as, for example, 50 μ m or less, the peripheral bonding can not be guaranteed. (Paragraph [0037].)

As discussed in the present application, only through experimentation did the inventors determine the proper thickness of the first adhesive and the second adhesive:

However, the various repeated experiments by the inventors made it clear that the attempt of direct bonding of one side of adhesive surfaces of double-stick adhesive tape to net base resulted in bonding only on linear contact as in the case of liquid or viscous adhesive, since the cross section of a filament making up a net was circular. This is because the thickness of one side of adhesive layers of commercially available medical double-stick adhesive tape is about 30 to 50 μ m, whereas the filaments of 100 to 150 μ m are usually used since the filament making up net base needs certain strength, so that pressing the adhesive layer of double-stick adhesive tape to net base causes only linear bonding along one side of the filament with a circular cross section. (Paragraph [0007].)

As *Maekawa* does not disclose that its inventors ever contemplated any advantages or disadvantages of having different thicknesses of adhesives, the features of dependent claim 3 are not an obvious design choice as suggested by the examiner.

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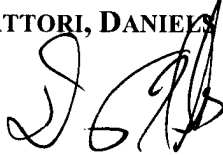
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(VIII) CONCLUSION

If this paper is not timely filed, appellants hereby petition for an appropriate extension of time. The fee for any such extension may be charged to Deposit Account No. 50-2866, along with any other additional fees that may be required with respect to this paper.

Respectfully submitted,

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(IX) CLAIMS APPENDIX

Claim 1 (Previously Presented): A double-stick adhesive tape for a wig having a net member as a portion of a wig base, comprising:

a first adhesive surface layer having a thickness more than half of a diameter of the net member to stick to the net member, and

a second adhesive surface layer having a thickness equal to or more than a diameter of human hair,

wherein the first adhesive surface layer is thicker than the second adhesive surface layer, and a side of the first adhesive surface layer to the net member has convexities and concavities of the type formed on the surface by pressing, or blast processing, in order to scatter light.

Claim 2 (Canceled)

Claim 3 (Previously Presented): The double-stick adhesive tape for the wig as set forth in claim 1, wherein the thickness of the first adhesive surface layer is between 50 and 200 μm and the thickness of the second adhesive surface layer is between 50 and 150 μm .

Claim 4 (Canceled)

Claim 5 (Canceled)

Claim 6 (Previously Presented): The double-stick adhesive tape for the wig as set forth in claim 1, wherein the concavities and convexities are provided by pressing the first adhesive surface layer with a press.

Claim 7 (Canceled)

Claim 8 (Previously Presented): The double-stick adhesive tape for the wig as set forth in claim 1, wherein the concavities and convexities are formed by blast processing.

Claim 9 – 13 (Canceled)

Claim 14 (Withdrawn) A wig characterized in that it is the wig comprising:
a wig base having a net member at least as a portion;
hairs implanted to said wig base; and
double-stick adhesive tapes for the wig having adhesive layers on both sides of a core material respectively, with one side of the adhesive layers bonded to said wig base, and with the other side of the adhesive layers bonded to a wearer's head; and
the surface of said one side of the adhesive layers of said double stick adhesive tape is deglossed.

Claim 15 (Withdrawn) A wig characterized in that it is the wig comprising:

a wig base having net member at least as a portion;

hairs implanted to said wig base; and

double-stick adhesive tapes having adhesive layers on both sides of a core material respectively, with one side of the adhesive layers bonded to said wig base, and with the other side of the adhesive layers bonded to a wearer's head; and

the surface of said one side of the adhesive layers of said double stick adhesive tape is deglossed, and said deglossed side of the adhesive layers is set inside of the network of said net member, and bonded to said net member.

Claim 16 (Withdrawn) The wig as set forth in claim 14 or 15, characterized in that the surface of said one side of adhesive layers of said double stick adhesive tape is deglossed by forming minute concavity and convexity on it.

Claim 17 (Withdrawn) The wig as set forth in claim 14 or 15, characterized in that said minute concavity and convexity on the surface of said one side of adhesive layers are provided by pressing said adhesive layer with a press having minute saliences.

Claim 18 (Withdrawn) The wig as set forth in claim 14 or 15, characterized in that said minute concavity and convexity on the surface of said one side of adhesive layers are formed by spray-coating granular adhesive on the surface of the core material.

Claim 19 (Withdrawn) The wig as set forth in claim 14 or 15, characterized in that said minute concavity and convexity on the surface of said one side of adhesive layers are provided by blast processing.

Claim 20 (Withdrawn) The wig as set forth in claim 19, characterized in that said blast processing is conducted by using finely crashed dry ice or ice as blast material, and blasting said blast material onto the surface of said one side of adhesive layers.

Claim 21 (Withdrawn) The wig as set forth in claim 16, characterized in that the surface roughness of said minute concavity and convexity is made larger than light wavelength.

Claim 22 (Withdrawn) A wig characterized in that it is the wig comprising:
a wig base having a net member at least as a portion;
hairs implanted to said wig base; and
double-stick adhesive tapes having adhesive layers on both sides of a core material respectively, with one side of the adhesive layers bonded to said wig base, and with the other side of the adhesive layers bonded to a wearer's head; and

said one side of the adhesive layers of said double-stick adhesive tape is formed to have a thickness to bury more than half of a wire diameter of said net member, and said one side of the adhesive layers is set inside of the network of said net member, and bonded to said net member.

Claim 23 (Withdrawn) A wig characterized in that it is the wig comprising:

a wig base comprising net member at least as a portion;

hairs implanted to said wig base; and

double-stick adhesive tapes having adhesive layers on both sides of a core material respectively, with one side of the adhesive layers bonded to said wig base, and with the other side of the adhesive layers bonded to a wearer's head; and

said one side of the adhesive layers of said double-stick adhesive tape is formed to have a thickness to bury more than half of a wire diameter of said net member, and the surface of said one side of the adhesive layers is deglossed; and

said one side of the adhesive layers is set inside of the network of said net member, and bonded to said net member.

Claim 24 (Withdrawn) The wig as set forth in claim 16, characterized in that one side of adhesive layers of said double-stick adhesive tape is formed to have a thickness equal to, or more than said net member.

Claim 25 (Withdrawn) The wig as set forth in claim 24, characterized in that the thickness of one side of adhesive layers of said double-stick adhesive tape is in the range between 50 and 200 μm .

Claim 26 (Withdrawn) The wig as set forth in any one of claims 14, 15, 22 or 23, characterized in that the other side of adhesive layers of said double-stick adhesive tape is formed to have the thickness equal to, or more than the diameter of a hair.

Claim 27 (Withdrawn) The wig as set forth in claim 26, characterized in that the thickness of the other side of adhesive layers of said double-stick adhesive tape is 50 μm or more.

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(X) EVIDENCE APPENDIX

n/a

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(XI) RELATED PROCEEDINGS APPENDIX

n/a